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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re A.C., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

VICTORIA C.,

Defendant and Appellant.

G046700

(Super. Ct. No. DP010159)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jane Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Hassan Gorguinpour, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

For the second time, Victoria C. appeals a court order regarding her daughter, A.C., who presently resides with her foster parents and guardians. The first appeal dealt with giving Victoria additional reunification services long after the time for doing so had expired. In an unpublished opinion, we held that the trial court had erred when, ruling on Victoria's petition under Welfare & Institutions Code section 388,¹ it ordered these additional services. We ordered the court to re-hear the section 388 petition and choose from among the three permitted alternatives: (1) terminate A.C.'s guardianship, (2) continue the guardianship and allow more visitation, or (3) deny the petition and maintain the status quo. (See *In re A.C.* (July 6, 2011, G044338 [nonpub. opn.])

On remand, the trial court re-heard the petition and chose to deny it. The court then set the hearing under section 366.26. After testimony and a review of several years' worth of documentary evidence, the court terminated Victoria's parental rights.

Victoria has appealed from this order. She argues that the beneficial relationship exception of section 366.26, subdivision (c)(1)(B)(i) applies to her, because she has maintained regular visitation and contact with A.C. and A.C. would benefit from continuing their relationship.

Victoria has certainly maintained regular visitation, but she failed to carry her burden to show that the benefit A.C. would obtain from continuing the relationship would outweigh the stability and permanence afforded by adoption. Substantial evidence supports the trial court's determination that the beneficial relationship exception does not apply and that A.C. should be freed for adoption. We therefore affirm the trial court's order.

¹

All further statutory references are to the Welfare and Institutions Code.

FACTS

In May 2004, when A.C. was three years old, Victoria threatened to commit suicide in front of her and her 11-year-old brother, Alfonso. Victoria told A.C. to bring her a knife from the kitchen; when A.C. complied, Victoria threatened to stab herself. A roommate called the police, and SSA detained both children, placing them in foster care. A.C. was placed with the T. family, after being detained in Orangewood for just over a month.

The children's father, Efren C., could not be located at the time of these events and for several years afterwards.² During the first two years that A.C. was with the T. family, Victoria had two more sons, the first with the man she had been living with when the children were detained and the second with another man she knew briefly. Neither man is still in this picture.

After A.C. and her brother were detained, Victoria visited A.C. regularly. Her visits were initially monitored ones. They became unmonitored in late 2005.

Victoria had 18 months of reunification services, and she had a psychological evaluation in October 2004. During this time, she, and eventually her first new baby, moved from place to place, making it difficult for SSA to stay in contact with her. She also found it hard to find and keep a job.

Victoria was unable to complete her reunification requirements, and reunification services were terminated in January 2006. At the same time, the court ordered long-term foster care as the permanent plan. The SSA reports identified not only Victoria's lack of financial resources and appropriate housing as impediments to reunification but also her inability to understand the responsibilities of parenthood and to engage in her children's lives. In August 2006, she gave birth to another son.

²

Victoria and Efren together have three more children, supposedly living in Mexico.

In January 2007, SSA reported that A.C.'s foster parents, the T.s, wished to adopt A.C., whom they had begun to regard as their own child. Although Victoria was allowed to visit on both Saturdays and Sundays, in April 2007, A.C. began to refuse to see Victoria on Sundays, preferring to stay with her foster family. She continued to resist efforts to make her visit Victoria more than once a week. SSA strongly recommended adoption for A.C., who was now six years old.

A contested periodic review took place between May 16 and June 5, 2007. After hearing testimony from various witnesses, including A.C. in chambers, the court set a selection and implementation hearing under section 366.26 for October 2, 2007. The court ordered a bonding study for the October 2007 hearing on A.C.'s placement. During this period, Victoria petitioned under section 388 to have both children returned to her or to be provided with more reunification services.

The hearing eventually took place on December 19, 2007. The court denied Victoria's section 388 petition, finding that she had not demonstrated the necessary changed circumstances. The court found a strong bond between Victoria and A.C. existed, apparently based for the most part on the visitation record. The court therefore determined that guardianship, with Mrs. T. as guardian, and continued visitation with Victoria was best for A.C. Letters of guardianship were issued to Mrs. T. on January 14, 2008. The court did not terminate Victoria's parental rights.

Two more periodic reviews took place, in July 2008 and in January 2009. At the latter review, SSA recommended another hearing to consider A.C.'s adoption. The court ordered another bonding study³ and set a hearing date of May 19, 2009.

Then Efren, A.C.'s father, showed up. He had been living in Modesto for about six years with his girlfriend and her children. Efren claimed he had not known where A.C. was living between August 2003, when he abandoned the family, and March

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The second bonding study was completed in April 2009.

2009, when SSA finally found him.⁴ The court granted Efren presumed father status on June 24, 2009. A.C. was by then eight years old. The court ordered therapy for A.C. to deal with this new person in her life. A.C. began therapy in August 2009.

SSA recommended terminating parental rights and an adoption by the T.s under section 366.26 in April 2009. Victoria, Efren, and A.C. each filed petitions under section 388. At the hearing on September 8, 2009 (continued from May), all three petitions were withdrawn pursuant to stipulation. The court confirmed the legal guardianship, and a new visitation schedule, which included a change from unmonitored to monitored visitation, was implemented for A.C. and Victoria. The court ordered SSA to use its best efforts to facilitate visitation between Efren and A.C. in a therapeutic setting, with input from A.C. and her therapist.

SSA continued to believe adoption to be the best plan for A.C. The section 366.26 hearing was set for June 2010, and was continued several times.⁵ In the meantime, Mrs. T. filed for de facto parent status⁶ and prospective adoptive parent status. These petitions were granted in June 2010.

On August 23, 2010, Victoria filed a section 388 petition. She asked to set aside the guardianship and return A.C. to her care. Alternatively, she wanted family reunification services or, third choice, increased unmonitored visitation and telephone calls.

The hearing on Victoria's section 388 petition and the section 336.26 recommendation took place between August 23 and October 5, 2010. The court granted only the portion of Victoria's section 388 petition requesting more reunification services.

⁴ The record does not explain how SSA finally found Efren.

⁵ The preliminary hearing alone had to be continued several times while SSA tried to find Efren – who had become lost again – to give him notice.

⁶ A “de facto parent” is a “person who, on a day-to-day basis, assumes the role of parent, seeking to fulfill both the child’s physical needs and his psychological needs for affection and care.” (*In re B.G.* (1974) 11 Cal.3d 679, 692, fn. 18; see also Cal. Rules of Court, rule 5.502, subd. (10).)

It ordered further reunification services for Victoria and vacated the section 366.26 hearing. The court did not, however, order termination of the guardianship.

SSA prepared a new case plan after the court's decision. The new case plan specified conjoint therapy for Victoria with A.C. and individual therapy for each of them with an eye toward reunification. The case plan also specified monitored visits for five hours on Saturdays, with visits monitored by SSA or an individual approved by SSA.

A. C.'s guardian and SSA appealed from the order granting Victoria's section 388 petition. We reversed in an unpublished opinion (*In re A.C., supra*, G044338), holding that the time for reunification services had passed. The options open to the trial court at this point in A.C.'s life were (1) terminate the guardianship, (2) continue the guardianship and allow more visitation, or (3) deny the petition and leave things as they were. We sent the case back to the trial court for further proceedings.

Between October 2010 and July 2011 (while the appeal was pending), Victoria continued to visit A.C., and the two of them entered therapy. Victoria also had individual therapy. When she visited A.C., Victoria usually brought the two younger boys, who drew her attention from A.C. and often disrupted the visits with their unruly behavior.⁷

In November 2010, A.C.'s older brother Alfonso was arrested, while on probation, for possession of methamphetamine powder. He kept the drug on a dresser in Victoria's living room, where he slept. Apparently Alfonso had become a member of a gang.⁸ Alfonso told a visiting social worker that neither he nor Victoria was employed, but that they "find[] a way to pay the bills."⁹ Along with Alfonso and the two younger

⁷ One visitation monitor observed, "[Victoria] did not appear to know age appropriate activities or conversations for a 10 year old girl."

⁸ On one visit to Victoria's home, the case worker noted that one of Victoria's small sons had his head shaved in gangster fashion to mimic Alfonso's appearance.

⁹ Victoria receives \$500 a month from public assistance.

boys, Alfonso's pregnant girlfriend was also living in the house.¹⁰ (The baby was born sometime between November 2010 and April 2011.) Victoria began receiving voluntary family services for the two younger boys after Alfonso's arrest.

Victoria's joint therapy with A.C. did not go particularly well. The therapist reported A.C. was guarded and reserved with her mother that she was fidgety and bored during the sessions. If the therapist tried too hard to get A.C. to discuss her feelings, A.C. would begin to cry. Victoria's individual therapy did not go well either. By March 2011, after diligently attending sessions for several months, Victoria was still not ready to be reunited with A.C.

The social worker also noted Victoria's evasiveness on the subject of her employment; she claimed to be working, but could produce no proof. Finally, Victoria admitted that she had been lying about being employed and that she had not worked since 2008.

In May 2011, A.C. told her therapist that she no longer wanted to go to counseling with her mother. The therapist opined that additional counseling for Victoria was basically a waste of time, because there was no progress. She also indicated that A.C. did not feel any connection with her mother.

By August 2011, A.C. had decided she no longer wanted visits with her mother. She repeatedly conveyed this decision to her therapist, her social worker, and the person who transported her to the visits. She began asking her case worker, "When is this all going to be over?" She told the case worker she wanted to be adopted and "live a childhood that does not involve Social Services." The therapist continued to report no progress with the joint therapy and A.C.'s continued distance from Victoria, despite Victoria's obvious desire to reunite with A.C.

¹⁰ There is some uncertainty about how old the girlfriend is. She was reported to SSA as being 16, but Victoria claimed she was 18.

During the weekly visits, A.C. was bored at the visitation center and would try to talk to the staff instead of to Victoria. When asked if she would like the visits to take place somewhere else, however, A.C. said she would not. She did not want to be alone with Victoria. She did not want to visit at all.

After receiving the remittitur, the court re-heard Victoria's section 388 petition on December 12, 2011, denying it and maintaining A.C.'s guardianship without change. The court also set the hearing under section 366.26 for December 14. The hearing took place over several days. The court terminated Victoria's (and Efren's) parental rights, freeing A.C. for adoption, on February 28, 2012, shortly after her 11th birthday.

Victoria has appealed from the order terminating her parental rights. She maintains that she has met the requirements of the beneficial relationship exception set forth in section 366.26, subdivision (c)(1)(B) (i), and the court erred when it found to the contrary.

DISCUSSION

Victoria argues on appeal that the beneficial relationship exception to section 366.26 applies in this case; i.e., she has maintained regular visitation and contact with A.C., and A.C. would benefit from a continuing relationship with her. (See § 366.26, subd. (c)(1)(B)(1).) Without question Victoria has maintained regular visitation. After reviewing all the evidence, however, the trial court found Victoria had failed to carry her evidentiary burden to show benefit to A.C. from continuing the relationship.

“On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) We also keep in mind the legislative preference for adoption absent some exceptional circumstance, such as the existence of a parent-child bond of sufficient strength to

outweigh the obvious benefits of a permanent home. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) Victoria bears the burden of showing the application of the exception to her; she must “show more than frequent and loving contact, an emotional bond with the child, or pleasant visits – the parent must show that he or she occupies a parental role in the life of the child.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

Ample evidence supports the court’s order in this case. The court correctly determined that Victoria did not occupy a parental role in A.C.’s life. A.C. appeared to regard Victoria’s visits in the light of obligations or chores, rather than the high points of her week. Victoria did not know how to communicate with A.C., and the therapy sessions – individual and joint – were a failure.

The most striking change in the period between the two appeals is A.C.’s determination to bring visitation – and indeed her entire involvement with the dependency system – to a speedy close. She repeatedly voiced her objection to continued contact with Victoria and her desire to be adopted by the T.s

Although a child’s wishes are not dispositive, the court is required to consider them. (§ 366.26, subd. (h)(1).) They are “powerful demonstrative evidence” of the child’s best interest. (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1087.)

A.C.’s strongly expressed preference is not the only factor favoring the termination of Victoria’s parental rights. A.C.’s brother Alfonso, who is now an adult, lives with Victoria. Also in the house are Alfonso’s girlfriend, who may be underage, and their baby. In November 2010, Alfonso was arrested for drug possession; he had methamphetamine powder in the house he shared not only with Victoria, but also with two small children. Either Victoria did not disapprove of this state of affairs or lacked control over her own household sufficient to prevent Alfonso from bringing drugs into the home. Either way, this is not an environment in which A.C. is likely to thrive.

A.C. is now 11 years old; she turns 12 in February 2013. She has been in the dependency system since she was three. Her childhood is largely behind her; as the

trial court stated, she is “getting to be a young lady now,” with a mind of her own. Although it is true she has been ambivalent in the past about maintaining a relationship with Victoria, in the months leading up to the section 366.26 hearing she did not waver. She wanted to be done with SSA, with the court, and with the visits. To force her to continue visiting Victoria in the face of these strong objections, especially as A.C. enters her teens, would be, to put it mildly, counterproductive.

Adoption is the preferred choice, and the T.s have been willing to adopt A.C. for many years. The court correctly determined that Victoria did not meet the requirements of the beneficial relationship exception to section 366.26 and that it would be in A.C.’s best interests to terminate Victoria’s parental rights.

DISPOSITION

The order terminating Victoria’s parental rights is affirmed.

BEDSWORTH, J.

WE CONCUR:

O’LEARY, P. J.

MOORE, J.